

The Orissa Gazette



**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 137 CUTTACK, MONDAY, JANUARY 17, 2011 / PAUSA 27, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 4th January 2011

No. 76—li/1 (S)-37/2002-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th January 2010 in Industrial Dispute Case No. 44 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the management of MARKFED, Orissa Granular Fertilizer Plant, Bargarh and its workman Shri Krushna Bala Sahu was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 44 OF 2003

The 27th January 2010

Present :

Miss Sarojini Mahapatra, M.A., LL.B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of MARKFED, . . . First-party Managements
Orissa Granular Fertilizer Plant,
Bargarh through.—

1. The Secretary, MARKFED, Orissa,
Old Station Road, Bhubaneswar.
2. The Area Manager, MARKFED, Orissa
Granular Fertiliser Plant,
At/P.O. Bargarh, Dist. Bargarh.

And

Its Workman, Shri Krushna Bala Sahu, . . . Second-party Workman
 At/P.O. Pradhanpali, Jamurda,
 Dist. Bargarh.

Appearances :

Shri N. Kar, Advocate	..	For the First-party Management
Shri R. K. Mohanty, Advocate	..	For the Second-party Workman

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) as per Memo No. 8142 (6), dated the 21st August 2003 for adjudication of the Schedule :

"Whether the retrenchment of Shri Krushna Bala Sahu with effect from the 30th April 2001 by the management of MARKFED, Orissa is legal and/or justified ? If not, to what relief Shri Sahu is entitled ?"

2. The second-party workman stated as follows :

The Orissa State Co-operative Marketing Ltd., Orissa, Bhubaneswar is a registered Co-operative Society situated at Bhubaneswar which is known as MARKFED Limited, Bhubaneswar. The establishment of first-party managements has a Solvent Extraction Plant at Bargarh, Granular Fertiliser Plant at Bargarh, Cold Storages at different parts of Orissa and more than 100 Area Offices throughout Orissa and deals with the Large Scale Fertiliser Limited throughout Orissa. The first-party managements employees more than 100 workmen in their establishment are working at their head office and different units of establishment.

Further it is alleged in the case of the workman that the workman was appointed as Assistant Operator (N. M. R.) at the Solvent Extraction Plant, Bargarh with effect from the 2nd March 1989 as permanent workman of the establishment. The second-party workman was appointed continuously and regularly and worked as Assistant Operator for eleven years at the Plant with clean trac of service records. In addition to his work he was also working as permanent workman of the establishment with very less wages. The workman was relieving the permanent Assistant Operator in shift duties and in this way he was working as Regular Permanent Operator of the establishment and performing equal nature of work alongwith the permanent Operator. He was operating the Oil Mills and Machine of the Oil Mills and Refine Sections of the Solvent Extraction Plant and was running the machines of Solvent Extraction Plant. Further it is alleged that the management being satisfied with the performance of the second-party, transferred the second-party workman to the Granular Fertiliser Plant with effect from the 23rd June 1997 situated at Bargarh. The second-party workman was engaged there as Assistant Operator with effect from the 26th June 1997. He was operating the machines of Granular Fertiliser Plant up to the 28th April 2001. The second-party workman was performing his duty sincerely and honestly with monthly consolidated salary of Rs. 1,200.00. On the 28th April 2001 the first-party management served a letter of retrenchment from service and terminated the services of the second-party illegally.

The management without preparing any seniority list served the retrenchment notice under Section 25-F of Industrial Disputes Act, 1947 which is illegal, unfair and *mala fide*. The retrenchment order of the management is not maintainable in law as the same is not served as per Section 25-N of the I. D. Act, 1947. The first-party management have not followed the requirements of Section 25-N of the I. D. Act and Rules which is mandatory. The first-party management has not served three months notice, not obtained prior permission from the Government, nor served notices with appropriate Government, not paid the retrenchment compensation and other formalities of Section 25-N of the I. D. Act and illegally terminated the workman from his service. The management has retained the junior employees such as Ajay Kumar Pattanaik, Miss Sabita Mohanty, Miss Minati Mishra, Jashobanta Panda, Siba Prasad Mishra and others and terminated the service of the second-party workman who is more senior as well as most competent than the above employees. The retrenchment order also violates Section 25-G of the I. D. Act, 1947 and Rules. The workman requested the management to reinstate him in service for several times but the management did not pay any heed towards him. The management has not paid the wages to the workman as per the pay scales admissible to the permanent Assistant Operator of the Establishment which the second-party is entitled to get. Hence the workman/second-party made a prayer that the reference be answered in favour of the workman and necessary Award be passed directing the management to reinstate the second-party in the post of the Assistant Operator with full back wages and all service benefits and with all arrear wages.

3. The first-party management has filed their written statement stating that the workman Shri Krushna Bala Sahu was engaged as Plant Helper on N. M. R. basis in S. E. Plant, Bargarh vide Officer Order No. 4986, dated the 2nd March 1989 of G. M., S. E. Plant, Bargarh considering his application, dated the 1st March 1989. His educational qualification was only Class-VII pass. The workman continued to work as Plant Helper on N. M. R. basis at S. E. Plant, Bargarh. The S. E. Plant, Bargarh became idle and stopped operation in the year 1995 and the workers working in the S. E. Plant became idle and received salary and wages without any work. The S. E. Plant, Bargarh was leased out to one Firm namely M/s. Hanuman Vitamin Foods Limited in May, 1997 and the said Firm did not accept the services of the second-party workman on hire basis for which he was transferred to G. F. Plant, Bargarh vide Office Order No 1652, dated the 23rd June 1997. As per the office order the workman was N. M. R. Plant Helper.

It is further alleged from the written statement that in obedience to the order, dated the 23rd June 1997, the workman joined as N. M. R. Plant Helper in Granular Fertiliser Plant, Bargarh on the 27th June 1997 and continued there till his retrenchment. The workman was never promoted/nor appointed in the post of Assistant Operator or his services were regularised in the post of Plant Helper/Assistant Operator. The workman was paid his wages at G. F. Plant, Bargarh from the 27th June 1997 basing on the L. P. C. sent by S. E. Plant, Bargarh on the 26th July 1997 in which the designation of the workman was mentioned as Plant Helper (N. M. R.).

As alleged the Marketing Federation (first-party management) suffered continuous loss due to various reasons and the loss went up to Rs. 83.23 Crores as on the 31st March 2000 and there was sharp reduction in business activities in the Federation necessitating reduction of surplus of man power. The matter was considered in a meeting held in the Chamber of the Hon'ble Minister, Co-operation and attended by the High Officials of the Co-operation Department, Finance

Department and MARKFED. It was decided in the meeting that at least 100 numbers of N. M. R. employees of MARKFED are to be retrenched and 14 numbers of R. C. M. S. employees working in the MARKFED at that point of time to be reverted back to the respective R. C. M. S. The J. F. C. S. (M. K. T. G.) vide his letter No. 21430, dated the 27th October 2000 has also instructed to retrench N. M. R. employee. The matter was placed before the Special Committee and the reports submitted by the Special Committee recommending the retrenchment of 99 numbers of N. M. R. employees, 29 employees of defunct Indo-Italian Project and reversion of 13 numbers of R. C. M. S. employees were accepted by the Committee of the Management on the 29th November 2000. The gradation list of N. M. R. employees working under the first-party was prepared categorywise and the junior persons in the list were selected for retrenchment. As per the Notice No. 694-Estt., dated the 28th April 2001 which was published to retrench 96 numbers of N. M. R. employees including the second-party workman. Accordingly, the workman was retrenched with effect from the 30th April 2001 and the retrenchment compensation and payment for one month in lieu of notice amounting to Rs. 12,000 was paid to the workman. So the allegation as alleged by the workman are false. There is no scope to take back the workman into service due to precarious financial condition of the MARKFED. The retrenchment of the second-party workman is legal and justified. So the management prayed that the workman is not entitled to get any back wages as he is gainful employment since the date of his retrenchment. The management also prayed that the workman was an N. M. R. worker on daily wage basis and is not entitled to regular Scale of Pay.

4. Out of the pleadings of the parties the following issues have been framed :

ISSUES

- (i) "Whether the retrenchment of Shri Krushna Bala Sahu with effect from the 30th April 2001 by the management of MARKFED, Orissa is legal and/or justified ?"
- (ii) To what relief the workman Shri Sahu is entitled ?"

5. Both the parties have filed their respective documents. On behalf of the management first-party, two witnesses have been examined. Shri Prakash Chandra Pattanaik, Area Manager, Incharge MARKFED has been examined as M. W. 1. Shri Bholanath Padhy, General Manager, Granular Fertilisers Plant, Bargarh has been examined as M. W. 2. On behalf of the second-party workman Shri Krushna Bala Sahu has been examined as W. W. 1.

FINDINGS

6. *Issue No. (i)*—In order to facilitate this case issue No. (i) should be taken up for consideration at the first stage. The Orissa State Co-operative Marketing Federation Limited, Orissa, Bhubaneswar is a registered Co-operative Society situated at Bhubaneswar which is presently known as MARKFED Ltd., Bhubaneswar. The establishment of the first-party management has a Solvent Extraction Plant at Bargarh, Granular Fertilisers Plant at Bargarh, Cold Storage at different parts of Orissa and more than one hundred Area offices throughout the Orissa and deals in large Scale Fertilisers business throughout the Orissa. Admittedly, Shri Krushna Bala Sahu was engaged as a Plant Helper on N. M. R. basis at the Solvent Extraction Plant, Bargarh with effect from the 2nd March 1989 of Granular Fertiliser Plant, Bargarh and Solvent Extraction Plant at Bargarh. His educational qualification was Class-VI pass. The second-party workman appointed continuously

and regularly and worked as Assistant Operator for 11 (eleven) years at the Plant with good service records. As alleged though the second-party workman was appointed as Assistant Operator (N. M. R.) still then he was working as permanent workman of the establishment with very less wages. The workman was relieving the permanent Assistant Operator in shift duties and in this way he was working as regular permanent Operator of the establishment and performing equal nature of work alongwith the permanent Operator.

As per the case of the first-party management the workman continued to work as Plant Helper on N. M. R. basis at S. E. Plant, Bargarh. The Solvent Extraction Plant, Bargarh became idle and stopped operation in the year 1995 and the staff working in S. E. Plant also became idle and received salary and wages without any work. As alleged Solvent Extraction Plant, Bargarh was leased out to one Firm namely, M/s. Hanuman Vitamin Foods Ltd. in May, 1997 and the said Firm did not accept the services of the second-party workman on hire basis for which the workman was transferred to Granular Fertiliser Plant, Bargarh vide Office Order No. 1652, dated the 23rd June 1997. The workman joined in G. F. Plant, Bargarh on the 27th June 1997 and continued there till his retrenchment. The workman was paid his wages at G. F. Plant, Bargarh from the 27th June 1997 basing on the L. P. C. sent by S. E. Plant, Bargarh on the 26th July 1997 in which the designation of the workman was mentioned as Plant Helper, N. M. R. At this stage the evidence as well as the documents filed by the management should be scrutinised in a careful manner. Shri Prakash Kumar Pattnaik, M. W. 1 the Area Manager incharge MARKFED, Orissa, Bhubaneswar who joined in the first-party management on 9th March 1992 as Maintenance Incharge at Solvent Extraction Plant, Bargarh and continued till December, 1994, thereafter he joined at Granular Fertilisers Plant, Bargarh. As per his evidence the workman was engaged as Plant Helper on temporary local arrangement on N. M. R. basis in Solvent Extraction Plant, Bargarh as per Order, dated the 2nd March 1989. His educational qualification is Class 6th pass. At the time of his appointment, advertisement was not made nor the management called for the list of candidates from Employment Exchange nor any selection process was made. The second-party was appointed on a purely temporary basis as a stop gap arrangement and he was continuing in his job like other regular employees. As alleged from his evidence the Solvent Extraction Plant, Bargarh stopped operation and the staff working in this Plant became idle and was getting salary without any work. So this Plant was leased out to M/s. Hanuman Vitamin Foods Ltd., in the month of May, 1997. M/s. Hanuman Vitamin Foods Ltd. did not agree to accept some employees including the second-party of Solvent Extraction Plant. So the second-party workman instead of being retrenched, on compassionate ground was withdrawn and directed to work at Granular Fertilisers Plant, Bargarh on the 23rd June 1997. The second-party workman was never appointed nor promoted in a regular manner against Scale of Pay like a regular employees to any other post while working in the Solvent Extraction Plant and Granular Fertilisers Plant, Bargarh.

7. The management has filed an application of the workman on the 1st August 1989 which is marked Ext. 1. Ext. 2 is the office order of the Management which discloses that the management has appointed the workman as Plant Helper on N. M. R. basis @ Rs. 10.00 per day with effect from the date of his joining on temporary for a period of 89 days subject to extension on his satisfactory work. Ext. 3 is the School Leaving Certificate which discloses that the qualification of the workman is Class VII pass. Ext. 4 is the order, 23rd June 1997 of MARKFED, Orissa giving details names of the workers working in different wings of the MARKFED at different places which discloses that the

employees named in the list working at Solvent Extraction Plant, Bargarh are withdrawn and posted at different unit offices of MARKFED, Orissa where name of Shri Krushna Bala Sahu, Plant Helper, N. M. R. has been mentioned and he was working in Granular Fertiliser Plant, Bargarh. Ext. 5 is the Last Pay Certificate from which it is apparent that his basic pay was Rs. 1,200 per month as N. M. R. consolidated. Ext. 6 is the proceeding of the meeting taken by the Hon'ble Minister, Co-operation on the 5th June 2000 to review activities of Orissa State Co-operative Marketing Federation, R. C. M. S. and Co-operative Cold Stores. As per this proceedings the MARKFED had a loan liability of Rs. 53.65 crores to repay to State Government and the accrued interest on the above loan till the 31st March 1999 is Rs. 49.86 crores. Ext. 7 is the letter, dated the 27th October 2000 for approval of payment of D. A., House Rent Allowances and corresponding revised pay in advance of scale of pay to 18 (eighteen) numbers of Peons. Ext. 8 is the notice, dated the 28th April 2001 regarding the retrenchment is being taken up by following the provisions of Industrial Disputes Act, 1947 on the basic principle of "Last come and first go" categorywise under different categories of staff. The name of the workman Shri Krushna Bala Sahu has been mentioned in the list in Sl. No. 92. Ext 9 is the extract of the proceedings of the Committee of Management of O. S. C. M. F. Limited held on the 29th November 2000. Ext. 10 is the notice of retrenchment under Section 25-F of the Industrial Disputes Act addressing to the second-party workman. Ext. 11 is the seniority list of N. M. R. Helpers. Ext. 12 is the specific card issued by the General Manager in favour of the workman taking his attendance on each date of work. Ext. 13 is the Attendance Register. Ext. 14 is the N. M. R. Consolidated Pay Bill Register for the year 1994-1995 and 1995-1996. Ext. 15 is the N. M. R. Consolidated Pay Bill Register from 1996-1997 to 2003. Ext. 16 is the Acquittance Roll from 4/2000 to 3/2001. Ext. 17 is the Inspection Report of Shri M. K. Pradhan, Inspector of Factories and Boilers, Bargarh Zone, Bargarh. Ext. 18 is the Inspection Report by Shri M. K. Pradhan. Ext. 19 is the order of the Hon'ble High Court in W. A. No. 101 of 2005. Ext. 20 is the Judgment of the Hon'ble High Court in O. J. C. No. 5240 of 1991.

The learned Advocate on behalf of the Management submitted that the Management has retrenched the workman in a proper manner following the rules of the Industrial Disputes Act. M.W. 1 in his cross-examination stated that the Staff Service Rules prevalent for these employees in the management. The Managing Director of the MARKFED is the appointing authority for all the employees. The employees are transferred from one unit to other units under MARKFED. The Management denied that Shri Krushna Bala Sahu, N. M. R. Plant Helper was working as Assistant Operator in the management.

8. At this stage the documents of the second-party workman should be scrutinised in a careful manner. Ext. A is the xerox copy of Staff Service Rules, 1999. Ext. B is the xerox copy of Bye-law. Ext. C is the office order disclosing "that the workman Shri Krushna Bala Sahu, Plant Helper (N. M. R.) working at the Granular Fertilisers Plant, Bargarh is withdrawn and posted to S. E. Plant, Bargarh until further order.". It is also apparent from the Ext. C that on joining at S. E. Plant the services of Shri Sahu will be placed at the disposal of M/s. Hanuman Vitamin Foods Ltd. in place of Shri M. S. Dash, Assistant Operator withdrawn. Ext. D is the office order of G. F. Plant, Bargarh from which it is clear that "Shri Krushna Bala Sahu, Assistant Operator, N. M. R. is hereby attached to the Godown Section to look after the day to day work in place of Shri Panchanan Pradhan, Sales Assistant who will retire on 29th February 2000 on attaining the age of superannuation. Ext. E is the office order of MARKFED, Orissa, Bhubaneswar directing the employees working at

S. E. Plant, Bargarh are withdrawn and posted to different units office of MARKFED, Orissa as mentioned in Ext. E. The name of the workman also placed in Sl. No. 9 under the Heading of Granular Fertilisers Plant, Bargarh. Ext E/1 is the office order which discloses that "In partial modification to previous office order the consolidated salary of Shri Krushna Bala Sahu, the workman, Assistant Operator is enhanced from Rs. 650.00 to Rs. 1,200 only per month with effect from the 1st September 1995. So it is clear from the documents filed by the workman that the workman was directed to work as Assistant Operator in different units and his salary was enhanced from Rs. 650.00 to Rs. 1,200 per month with effect from 1st September 1995. Ext. F is the Award in I. D. Case No. 57 of 2003 passed by this Court in favour of the workman Binod Bihari Nial. Ext. G is the seniority list of N. M. R. employees working in O. S. C. M. F. Limited, Bhubaneswar. Ext. H is the agenda of the meeting P. M. C. of O. S. C. M. F. Limited on the 28th August 1997 at 11.00 A. M. As per this document they have considered the case of the N. M. R. employees of Hrushikesh Mohapatra, Peon, Pitabash Rout, Peon, Braja Kishore Sethi, Peon, Kishore Sethy, Peon and Keshab Guru, Sales Assistant on their representations. Ext. J is the office order in favour of these above employees. Ext. K is the office order, dated the 16th September 1997. Ext. L is the office order, dated the 27th December 1990. Ext. M is the office order regarding appointment of Shri Pitabash Rout as Peon and his consolidated pay was Rs. 650.00 only per month. Ext. N is the office order.

9. The manufacturing process and activity of the management up to sales of its product. All these activities are not separate activities but a single integrated whole which represents only a single activity of industrial activity under MARKFED, Orissa. It is also admitted that this management leased its branches to Solvent Extraction Plant to M/s. Hanuman Vitamin Foods Limited and collected its profit. The investment of all the branches of the first-party management comes from one and same source as cleared by the Managing Director. The first-party management is the primary wings who activate the financial condition of all the branches of MARKFED. The management of all the branches including the employment branch of the MARKFED is vested with the Managing Director who guides, controls the entire establishment as a whole. It is alleged from the evidence on record as well as documents that the officials of the first-party management appointed, transfer the employees to different branches from time to time and in case of the second-party workman, he was transferred to G. F. Plant, Bargarh as per the office order and working as Assistant Operator therein at Bargarh. So the second-party workman was working in different units of the management by its office order. It is also clear from Exts. A, B, C and Ext. 8 that all the branches of the first-party management constituted one establishment.

10. The first-party establishment is an industrial establishment as defined under Section 25-L of the Industrial Disputes Act, 1947, read with Clause m of Section 2 of the Factories Act, 1948 and as it has employed more than one hundred workmen at different places and units throughout the Orissa. It is admitted fact that the workman was appointed by the first-party management and started his work with effect from the 2nd March 1989 and due to his satisfactory work he was transferred to G. F. Plant Bargarh with effect from the 23rd June 1997 and was drawing a consolidated salary of Rs. 1,200 per month. So the workman claims that all on a sudden the workman was served with a retrenchment notice the 28th April 2001 under Section 25-F of the Industrial Disputes Act, 1947 showing him as a surplus Helper workman and retrenched him with effect from the 30th April 2001 as his service was not required from the 1st May 2001. As per the evidence of M. W. 1 the workman was retrenched with effect from the 28th April 2001. Admittedly

the second-party had been appointed as a Plant Helper on N. M. R. basis (Ext. 2) by the Order of the first-party and thereafter the second-party was engaged by the management as an Assistant Operator for more than ten years (Ext. E/1) being posted by the first-party management from time to time. So the second-party workman claims that as he was working for more than ten years on different wings being engaged by the first-party management, his retrenchment by the management is illegal. It is also apparent from the evidence on record that while retrenching the second-party, the seniority list of the said category of the Assistant Operator has never been published nor prepared. The junior employees namely, Hrushikesh Mahapatra, Pitabas Rout and others have been regularised and joined as N. M. R. unskilled category and others employees have been continuing in the establishment of the first-party. The order of retrenchment against the second-party is illegal. Admittedly, there is no allegation made by the first-party management against this second-party during the tenure of service. The learned Advocate on behalf of the second-party submitted that the management has arbitrarily made the illegal retrenchment depriving the second-party workman from his rights contravening of Articles 14 and 16 of the Constitution of India. So the workman relied upon the reported decisions—the principles while retrenching in M/s. Swadesa Mitran Ltd., Madras *Vrs.* their workmen 1960 (3) S. C. Report 144/SCLJ 1950-83 Vol. 8, page 251 to 261. So the plea taken by the first-party that the second-party has not been employed through the Employment Exchange as per their service rule cannot be accepted. Admittedly, the second-party workman rendered service sincerely to the management for which the management as per order directed the second-party workman to work as Assistant Operator in G. F. Plant, Bargarh. Admittedly, the workman was working in the first-party management in different units for eleven years getting the undisputed salary from the management per month for his bread and butter and maintenance of his poor family. So, from the evidence on record as well as documents it is clear that the management without preparing any proper seniority list served the retrenchment notice under Section 25-F of the I. D. Act, 1947 which is illegal and unfair. In the establishment of the first-party there are more than one hundred workmen and the retrenchment order has not been properly served as per the Section 25-N of the I. D. Act, 1947. The compliance of the requirement of Section 25-N of the I. D. Act 1947 is mandatory and the first-party management has not served three months notice to the second-party workman nor obtained prior permission from the Government nor paid any retrenchment compensation nor other formalities complied prior to termination of service of the workman. So the retrenchment order is illegal and unfair. The first-party management has not followed the requirement of Section 25-N of the Industrial Disputes Act, 1947. All the service records such as L. P. C., transfer order, promotion order, etc. have been maintained by the first-party management from time to time. So, for the interest of justice the workman is entitled to get the relief of reinstatement in service with full back wages from the first-party management. Accordingly, issue No. (i) is answered.

11. *Issue No. (ii)*—In view of the above facts and circumstances as well as for the interest of justice, it can be concluded that the illegality committed by the first-party management in retrenching the second-party workman. I am of the opinion that the second-party workman is to be reinstated in service under the first-party management with full back wages and other service benefits. Hence the Award.

AWARD

The reference is answered on contest against the first-party management but without any cost. The retrenchment of Shri Krushna Bala Sahu with effect from the 30th April 2001 by the management of MARKFED, Orissa is illegal and unjustified. So the management is directed to reinstate the second-party workman Shri Sahu in service with full back wages and all other service benefits within three months from the date of the publication of the Award in the *Orissa Gazette*.

Dictated and corrected by me.

SAROJINI MAHAPATRA

27-1-2010

Presiding Officer

Labour Court, Sambalpur

SAROJINI MAHAPATRA

27-1-2010

Presiding Officer

Labour Court, Sambalpur

By order of the Governor

P. K. PANDA

Under-Secretary to Government